(30)

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 108 of 2005

Petitioner Govind

Versus

Respondents State of Chhattisgarh and others

And other connected matters.

Post for order on 4th January, 2007.

Sd/-
Satish K. Agnihotri
Judge

(31)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 108 of 2005

Petitioner — Govind

Versus

Respondents — State of Chhattisgarh & others

Writ Petition No. 150 of 2005

Petitioners — Ramavtar and others

Versus

Respondents — State of Chhattisgarh & another

Writ Petition No. 350 of 2005

Petitioner — Lochan Ram

Versus

Respondents — State of Chhattisgarh & others

Writ Petition No. 454 of 2005

Petitioners — Ram Prasad Yadav and others

Versus

Respondents — State of Chhattisgarh & others

Writ Petition No. 610 of 2005

Petitioner — Sukhin Bai

Versus

Respondents — State of Chhattisgarh & another

Writ Petition No. 846 of 2005

Petitioners — Subhash Chand and another

Versus

Respondents — State of Chhattisgarh & another

Writ Petition No. 908 of 2005

Petitioner — Sukwaro

Versus

Respondents — State of Chhattisgarh & others

Writ Petition No. 909 of 2005

Petitioner — Dhanush

Versus

Respondents — State of Chhattisgarh & others

Writ Petition No. 979 of 2005

Petitioner — Panchamram

Versus

Respondents — State of Chhattisgarh & others

Writ Petition No. 980 of 2005

Petitioners — Nandlal Sikdar and another

Versus

Respondents — State of Chhattisgarh & others

Writ Petition No. 1001 of 2005

Petitioner — Smt. Leela Bai
Versus
Respondents — State of Chhattisgarh & others

Writ Petition No. 1026 of 2005

Petitioners — Buddhuram and others
Versus
Respondents — State of Chhattisgarh & others

Writ Petition No. 1039 of 2005

Petitioner — DhanSay Sahu
Versus
Respondents — State of Chhattisgarh & others

Writ Petition No. 3944 of 2005

Petitioner — Purshotam
Versus
Respondents — State of Chhattisgarh & others

Writ Petition No. 4542 of 2005

Petitioner — Motu
Versus
Respondents — State of Chhattisgarh & another

Writ Petition No. 4654 of 2005

Petitioner — Ram Avtar
Versus
Respondents — State of Chhattisgarh & another

Writ Petition No. 5668 of 2005

Petitioner — Smt. Suraj Bai
Versus
Respondents — State of Chhattisgarh & others

Writ Petition No. 5746 of 2005

Petitioner — Punaram Sahu
Versus
Respondents — State of Chhattisgarh & others

Writ Petition No. 483 of 2006

Petitioner — Gorelal
Versus
Respondents — State of Chhattisgarh & others

(33)

Writ Petition No. 650 of 2006

Petitioner Bhaga Bai
Versus
Respondents State of Chhattisgarh & others

Writ Petition No. 697 of 2006

Petitioner Smt. Maheshia Bai
Versus
Respondents State of Chhattisgarh & others

Writ Petition No. 1980 of 2006

Petitioner Ankalu Ram
Versus
Respondents State of Chhattisgarh & others

Writ Petition No. 2767 of 2006

Petitioner Baratu
Versus
Respondents State of Chhattisgarh & another

Writ Petition No. 2768 of 2006

Petitioner Shraj Bai Sahu
Versus
Respondents State of Chhattisgarh & another

Writ Petition No. 2769 of 2006

Petitioner Smt. Dujia Bai
Versus
Respondents State of Chhattisgarh & another

Writ Petition No. 2770 of 2006

Petitioner Bharat
Versus
Respondents State of Chhattisgarh & another

Writ Petition No. 2771 of 2006

Petitioner Parsadi Ram
Versus
Respondents State of Chhattisgarh & others

Writ Petition No. 2917 of 2006

Petitioner Dhelu Ram Sidar
Versus
Respondents State of Chhattisgarh & others

(34)

Writ Petition No. 3030 of 2006

Petitioner — Visharam Yadav

Versus

Respondents — State of Chhattisgarh & others

Writ Petition No. 3938 of 2006

Petitioner — Manohar

Versus

Respondents — State of Chhattisgarh & others

Writ Petition (S) No. 4693 of 2006

Petitioner — Manharan

Versus

Respondents — State of Chhattisgarh & another

Writ Petition (S) No. 4694 of 2006

Petitioner — Tulsiram

Versus

Respondents — State of Chhattisgarh & others

Writ Petition (S) No. 5446 of 2006

Petitioner — Uttam Singh

Versus

Respondents — State of Chhattisgarh & others

Writ Petition(S) No. 6256 of 2006

Petitioner — Bishal Ram Sahu

Versus

Respondents — State of Chhattisgarh & another

Writ Petition (S) No. 6309 of 2006

Petitioner — Smt. Tilmati

Versus

Respondents — State of Chhattisgarh & others

Writ Petition (S) No. 6686 of 2006

Petitioner — Kashi Ram Sahu

Versus

Respondents — State of Chhattisgarh & others

Writ Petition No. 501 of 2004

Petitioner — Sanshu Ram

Versus

Respondents — State of Chhattisgarh & others

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35

And

Writ Petition (S) No. 4476 of 2006

Petitioner Sadhu Ram Yadav

Versus

Respondents State of Chhattisgarh & others

SB: Hon'ble Mr. Justice **Satish K. Agnihotri, J**

Shri Ashok Das Vaishnav, Shri Kishore Bhaduri, Shri Anoop Mazumdar, Smt. Fouzia Mirza, Shri Ajay Shrivastava, Shri H. S. Ahluwalia, Shri Rahul Birthery, Shri Ashok Soni, Shri Sunil Otwani, Shri Ashok Patil and Shri Abhijit Sarkar, Advocates for the petitioners.

Shri V. V. S. Murthy, Deputy Advocate General with Smt. Anju Ahuja, Deputy Government Advocate for the respondents.

ORDER

(Passed on this 4th day of January, 2007)

1. In this batch of matters (Writ Petition No.s 108/2005, 150/2005, 350/2005, 454/2005, 610/2005, 846/2005, 908/2005, 909/2005, 979/2005, 980/2005, 1001/2005, 1026/2005, 1039/2005, 3944/2005, 4542/2005, 4654/2005, 5668/2005, 5746/2005, 483/2006, 650/2006, 697/2006, 1980/2006, 2767/2006, 2768/2006, 2769/2006, 2770/2006, 2771/2006, 2917/2006, 3030/2006, 3938/2006, 4693/2006, 4694/2006, 5446/2006, 6256/2006, 6309/2006, 6686/2006, 501/2004 and 4476/2006), the petitioners, who have worked for more than 15 years as Gangmen seek a relief that the petitioners being permanent gangmen be retired at the age of 62 years in accordance with the Chhattisgarh Shaskiya Sevak (Adhivarshiki-Ayu) Adhiniyam, 1967 (for short 'the Act, 1967') read with Fundamental Rule (for short 'F.R.') 56.

2. The indisputable facts are that the petitioners were employed as gangmen. According to learned counsel for the petitioners they

attained the status of permanent employees, as defined under Rule 2(c) of the Chhattisgarh (Workcharged and Contingency Paid Employees) Pension Rules, 1979 (for short 'the Rules, 1979'), framed under Article 309 of the Constitution of India. After having attained the status of the permanent employee the petitioners would retire on attaining the age of 62 years on superannuation under the provisions of the Act, 1967.

3. Shri Ashok Das Vaishnav, Shri Kishore Bhaduri, Shri Anoop Mazumdar, Smt. Fouzia Mirza, Shri Ajay Shrivastava, Shri H. S. Ahluwalia, Shri Rahul Birthery, Shri Ashok Soni, Shri Sunil Otwani, Shri Ashok Patil and Shri Abhijit Sarkar, learned counsels appearing for the petitioners would submit that the petitioners were appointed as gangmen as workcharged employees as defined under Rule 2(h) of the Chhattisgarh Public Works Department Workcharged and Contingency Paid Employees Recruitment and Conditions of Service Rules, 1976 (for short 'the Rules,1976') and the petitioners have attained the status of the permanent employee under Rule 2(C) of the Rules 1979 after having completed 15 years of service. It was further contended that the same issue as to whether Gangmen shall be governed by the same policy for superannuation, as applicable to clause IV government employees, came up for consideration before a Full Bench of the High Court of Madhya Pradesh, Bench at Gwalior in Vishnu & others Vs. State of Madhya Pradesh & others **2006 (1) M.P.H.T. 374 (FB).** The learned Full Bench, having considered all the aspects came to the conclusion that the service of the Gangmen are governed by the rules applicable to the workcharged and contingency employees, even though the Gangmen are not included in the Schedule of the Rules, 1976 and the age of superannuation is 62

years as other class IV employees of the State Government, because they are in comparable category.

4. Learned counsels appearing for the petitioners further contended that the Act 1967, the Rules 1976, the Rules 1977 and the Rules 1979 were adapted by the State of Chhattisgarh after creation of the State of Chhattisgarh on 1.11.2000 from the existing State of Madhya Pradesh pursuant to the provisions of the M.P. Reorganization Act, 2000. Thus, the decision rendered by the Full Bench of the High Court of Madhya Pradesh at Gwalior would be applicable to the facts of the present cases also.

5. Shri V. V. S. Murthy, learned Deputy Advocate General with Smt. Anju Ahuja, learned Deputy Government Advocate, per contra contended that the permanent Gangmen are defined in Chhattisgarh Public Works Department Manual, in Chapter- IV at 4.003. Thus, the definition of the permanent employee under Rules, 1979 would not be applicable in case of permanent Gangmen. Learned counsel relied on a circular dated 20.7.1989 issued by the then State of Madhya Pradesh wherein it was stated that the Gangmen working in Public Works Department would be discharged from the work on attaining the age of 60 years.

6. Subsequently, by circular dated 20.1.2000 issued by the then State of Madhya Pradesh the retirement age of class III and class IV employees were increased to 62 years and F.R. 56 was accordingly amended. This was made further clear in the circular that the age of retirement of class III and class IV employees as 62 years would be applicable to the workcharged and contingency paid employees also.

7. I have heard learned counsel for the parties and perused the pleadings and documents appended thereto.

8. Rule 2 (b) & (h) of the Rules 1976 and Rule 2 (a) & (b) of the Rules, 1979 define 'contingency paid employee' and 'workcharged employee', similarly, as under:-

Rule 2.(b) and 2.(h) of the Rules, 1976 :-

"2.(b) 'Contingency-paid Employee' means a person employed for full time in an office or establishment and who is paid on monthly basis and whose pay is charged to "office Contingencies", excluding the employees who are employed for certain periods only in the year"

"2.(h) 'Workcharged Employee' means a person employed upon the actual execution, as distinct from general supervision of a specified work or upon subordinate supervision of departmental labour, store, running and repairs of electrical equipment and machinery in connection with such work, excluding the daily-paid labour and muster roll employed on the work."

Rule 2.(a) and 2.(b) of the Rules, 1979 :-

"**2. Definitions**. – In these rules, unless the context otherwise requires,--

(a) "Contingency paid employee" means a person employed for full time in an office or establishment and who is paid on monthly basis and whose pay is charged to office contingencies excluding the employees who are employed for certain period only in a year;

(b) "Work-charged employee" means a person employed upon the actual execution, as distinct from general supervision of a specified work or upon subordinate supervision of the departmental labour, store, running and repairs of electrical equipment and machinery in connection with such work, excluding the daily paid labour and muster-roll employee employed on the work."

9. Rule 2(c) of the Rules 1979 defines the word 'Permanent Employee' which reads as under:-

"2(c). 'Permanent employee' means a contingency paid employee or a work-charged employee who has completed fifteen years of service or more on or after the 1st January, 1974."

{ Provided that in respect of a contingency paid employee or a workcharged employee who has attained the age of superannuation on or after the First April 1981, permanent employee means an employee who has completed 10 years of service on or after the 1st January, 1974.}

10. Rule 8 of the Rules 1976 provides that in the matter of age, physical fitness of new entrants and age of suprannuation, as are applicable to the government servants of the comparable categories in the regular employees are applicable to the new entrants into the service.

11. The Act, 1967 provides for amendment of Fundamental Rules. Amendment in F.R. 56 reads as under:-

"2. **Amendment of Fundamental Rules.** For Rule 56 of the Fundamental Rules applicable to the State of Chhattisgarh as substituted by Section 3 of the Chhattisgarh Shaskiya Sevak Anivarya Seva Nivritti Ka Vidhi Manyatakaran Adhiniyam, 1967 (5 of 1967) (hereinafter referred to as the said Act) the following Rule shall be substituted, namely :-

{ 56. Age of superannuation.-(1) Subject to the provisions of sub-rule (2) {every Government Servant other than a Government Teacher and a Class IV Government Servant } shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:

Provided that a Government Servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years.

{ (1-a) Subject to the provisions of sub-rule (2), every Government Teacher shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty two years:

Provided that a Government teacher whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty two years.

Explanation. –For the purpose of this sub-rule "Teacher" means a Government servant by whatever designation called, appointed for the purpose of teaching in Government educational Institution

including technical or medical educational institutions, in accordance with the recruitment rules applicable to such appointment and shall also include the teacher who is appointed to an administrative post by promotion or otherwise and who has been engaged in teaching for not less than twenty years provided he holds a lien on a post in the concerned School/ Collegiate/ Technical/ Medical education service.}

{ (1-b) Subject to the provisions of sub-rule (2), every Class IV Government Servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty two years:

Provided that a Class IV Government Servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty two years.}

(2) { (a) A Government servant may, in the public interest, be retired at any time after he has completed 20 years qualifying service, or he attains the age of fifty years whichever is earlier, without assigning any reason by giving him a notice in writing}.

(b) the period of such notice shall be three months:

Provided that such Government servant may be retired forthwith and on such retirement the Government Servant shall be entitled to claim a sum equivalent to the amount of his pay plus a allowances for the period of notice at the same rates at which he was drawing them immediately before his retirement or, as the case may be, for the period by which such notice falls short of three months}."

12. The petitioners, working as gangmen, are workcharged employees, as the petitioners were employed upon the execution of work of the Public Works Department. The daily paid labours and muster roll employees on the work are excluded from the definition of the workcharged employees as prescribed in Rule 2 (h) of the Rules 1976. The permanent employees are contingency paid employees or workcharged employee who have completed 15 years of service or more on or after 1.1.1974. Casual labour gangs and permanent gangs

are provided in Public Works Department Manual (for short 'the P.W.D. Manual'). Para 4.003 of the said P.W.D. manual provides for registration and payment of daily casual labour regular labour gangs, as under:-

> "4.003. (A) Casual Labour Gangs.—When work is to be done by daily casual labour gangs, the subordinate incharge shall prepare a muster roll, which will show the names of the work-people, their attendance, the work done and the amount payable on this account. Monthly muster rolls if necessary, may be closed after seven days or as convenient.
>
> (B) Permanent Gangs.—(a) Attendance of permanent gangs shall be entered in an attendance register. Attendance will be recorded by Time Keeper daily in the morning. At headquarters, the attendance will be checked by Sub-Engineer at least twice a week outside headquarters. A cross mark (x) must be placed against each absent person so that no blank space is left.
>
> (b) Acquaintance roll will be based on the number of days a labourer has actually worked plus authorised holidays and leaves.
>
> (c) A register of work progress will be maintained in which following information will be recorded in five columns:-
>
> (i) Instructions for work to be done.
>
> (ii) Compliance of instructions.
>
> (iii) Quantities of measurable work/details of measurable work.
>
> (iv) Details of materials consumed.
>
> (v) Wages payable.
>
> (d) The Sub-Engineer will review the register of work progress twice a week at headquarter and at least once a week in case of out station works. The Sub-Engineer/S.D.O. will ensure adequate progress.
>
> (e) Any recruitment to regular gangs will be done only with the permission of S.E. Labourers more than 58 years of age shall not be employed/continued in regular gangs."

13. Casual labour gangs are muster role employees wherein the payment is made on weekly or monthly basis, the permanent gangs attendance is maintained in the attendance register recorded by the time keeper,

daily in the morning. Reading para 4.003 of the P.W.D. Manual with rule 2 (h) of the Rules, 1976, make it clear that the petitioners in the cases on hand are workcharged employees and as per Rule 2(c) of the Rules, 1979 if a workcharged employee has worked for more than 15 years of service or more on or after the 1st January, 1974, would become permanent employee. Admittedly, the petitioners have worked for more than 15 years, the same is not disputed by the respondents and as such they have become permanent employees of the State Government. Rule 6 of the Rules 1976 also provides for categorization of the 'workcharged' and 'contingency paid' employees, that the employees who have been in service for 15 years or more on 1st January, 1974 would be eligible for status of the 'permanent workcharged' or 'contingency paid' employees.

14. Rules 1976 do not mention as to whether the permanent gangmen are class IV employees or not. By circular dated 14.6.1974 the General Administration Department (Pay Commission Cell), Government of Madhya Pradesh, it was decided to constitute a service of the workcharged employees. Subsequently, by another circular dated 29.9.1975 the General Administration Department (Pay Commission Cell) decided to classify the gangmen under clause 4, which reads as under:-

कार्यभारित तथा आकस्मिकता से वेतन पाने वाले कर्मचारियों के पदों का वर्गीकरण

पद	वर्गीकरण
माली, हेडमाली, खलासी, चौकीदार, स्वीपर, डाकरनर, वाल्वमेन, मिस्त्री, हेल्पर, वर्कशाप हेल्पर, वाशरमेन, वाटरमेन, वागरमेन, वेटर, लेबोरेटरी अटेन्डेन्ट, क्लीनर, कुली, हमाल/लेबरमेट, वेयरर, आइलमेन, कीमेन, असिस्टेंट कारपेन्टर, बिल डिस्ट्रीब्यूटर, दरोगा, क्वारीमेन, असिस्टेन्ट जमादार, हेडमेन, अटेन्डर, फिल्टर अटेन्डेन्ट, बोटमेन/फेरीमेन, पोल्ट्री अटेन्डेन्ट, मिल्क डिस्ट्रीब्यूटर/सेल्समेन, बायलर अटेन्डेन्ट, फेमिली प्लानिंग अटेन्डेन्ट, अन्य अटेन्डेन्ट्स,	चतुर्थ श्रेणी

भृत्य, फर्राश, जमादार, पैकर, ग्रासकटर, पेसेन्जर, गेंगमेन, लास्कर, प्लोमेन, मसालची, फायर गोसदन, चेनमेन, फेरीमेन/वोटमेन, केयर टेकर, ड्रेसर, दफ्तरी, मेसन, सेल्समेन, इन्जीनमेन, हेमरमेन, फिशर मेन, फारेस्टगार्ड (अप्रशिक्षित), बारबर, डालमेकर, हीवर, वार्डवाय, वार्ड अटेंडेन्ट बार्डर, आया, कन्डक्टर/कन्डक्टरेस, कार्टमेन, मोटर साईकल ड्रायवर, स्क्वेडमेन, टीनमेन, टाईल टनर, टिन्डल, टोल–मोहर्रिर/सर्वेन्ट, बुल अटेन्डेन्ट, केटल अटेन्डेन्ट, डरी अटेन्डेन्ट.....इत्यादि

15. Thereafter, in the Madhya Pradesh Workcharged and Contingency Paid Employees Revision of Pay Rules, 1977, framed under the proviso to Article 309 of the Constitution of India, the post of gangmen was shown at serial No. (xxvii) in Annexure –I, (under Rule 3), under the coloumn "name of the post held by a workcharged or contingency paid employee". The definition of the "contingency paid employee" and "workcharged employee" are the same under the provisions of the Rules, 1976 and that of the Rules, 1979. In Rules, 1979, the 'permanent employee' was defined in Rule 2 (c) as a workcharged employee who has completed 15 years of service on or after 1.1.1974. Reading the circulars dated 14.6.1974 and 29.9.1975, Rule 2(h) of the Rules, 1976, Rule 8 of the Rules, 1976 Annexure-I to Rules 1977 and the definition enshrined in Rule 2(b) and in Rule 2(c) i.e. 'permanent employees' under Rules, 1979 together, it clearly follows that the permanent gangmen are governed by the same policy for superannuation, as is applicable to the Class IV government employees. It is not in dispute that the amendment to F.R. 56 under the Act, 1967, as amended by the Madhya Pradesh Shaskiya Sevak (Adhivarshiki-Ayu) Sanshodhan Adhiniyam, 1999 (M.P. Act No. 13 of 1999), published in the Gazette (Extraordinary) on 29th April, 1999,

provides for age of retirement to the Class IV government servants on attaining the age of 62 years.

16. It is well settled principles of construction of a statute that cognate and pari materia legislation should be read together as forming one system and as interpreting and enforcing each other. (See **J. K. Steel Ltd. v. Union of India**[1]). In **Board of Trustees of the Port of Bombay & others Vs. Sriyanesh Knitters**[2], it was held that it is permissible to read the provisions of two Acts together when the same are complementary to each other. In this connection it will be useful to refer the following observation of the Court of Appeal in **Oliver Ashworth (Holdings) Ltd v Ballard (Kent) Ltd**[3] :-

> "Where an enactment granted a statutory right but failed to define its limits, the court had to determine the scope of that right by reference to the purpose for which it was granted. That purpose was to be discerned by viewing the statute as a whole and, where that statute formed part of a statutory code intended to achieve a distinct purpose, by also having regard to the other statute in the code."

17. The Supreme Court in **Ahmedabad Pvt. Primary Teachers' Assn. Vs. Administrative Officer & others**[4] in para 12 has held as under:-

> "12.....On the doctrine of "pari materia", reference to other statutes dealing with the same subject or forming part of the same system is a permissible aid to the construction of provisions in a statute. See the following observations contained in Principles of Statutory Interpretation by G.P.Singh (8th Edn.), Syn. 4, at pp. 235 to 239:
>
> "Statutes in pari materia
>
> It has already been seen that a statute must be read as a whole as words are to be understood in their context. Extension of this rule of context permits reference to other statutes in pari materia i.e. statutes dealing with the same subject-matter or forming part of the same system. Viscount Simonds in a passage already noticed conceived it to be a right and duty to construe

every word of a statute in its context and he used the word context in its widest sense including 'other statutes in pari materia'. As stated by Lord Mansfield 'where there are different statutes in pari materia though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system and as explanatory of each other'.

* * *

The application of this rule of construction has the merit of avoiding any apparent contradiction between a series of statutes dealing with the same subject; it allows the use of an earlier statute to throw light on the meaning of a phrase used in a later statute in the same context; it permits the raising of a presumption, in the absence of any context indicating a contrary intention, that the same meaning attaches to the same words in a later statute as in an earlier statute if the words are used in similar connection in the two statutes; and it enables the use of a later statute as parliamentary exposition of the meaning of ambiguous expressions in an earlier statute."

18. For the reasons stated above, I am in respectful agreement with the decision of a Full Bench of the High Court of Madhya Pradesh, Bench at Gwalior in the case of **Vishnu & others** (supra).

19. The above stated Rules framed earlier by the State of Madhya Pradesh have been adapted by the State of Chhattisgarh on creation of the State of Chhattisgarh w.e.f. 1.11.2000.

20. In the result, the petitioners, who are permanent gangmen, are entitled to retire on attaining the age of 62 years in accordance with the Act, 1967. The petitions are accordingly allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

1. AIR 1970 SC 1173[1]
2. (1999) 7 SCC 359[2]
3. (1999) 2 ALL ER 791[3]
4. (2004) 1 SCC 755[4]

Thakur